

1 MCELROY, DEUTSCH, MULVANEY &
2 CARPENTER, LLP
3 ROBERT P. DONOVAN (*pro hac vice*)
4 rdonovan@mdmc-law.com
5 LEWIS H. GOLDFARB
6 (*pro hac vice* to be filed)
7 lgoldfarb@mdmc-law.com
Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Telephone: (973) 622-7711
Facsimile: (973) 622-5314

8 SEDGWICK LLP
9 KEVIN J. DUNNE Bar No. 40030
kevin.dunne@sedgwicklaw.com
ANDREW J. KING Bar No. 253962
andrew.king@sedgwicklaw.com
One Market Plaza
10 Steuart Tower, 8th Floor
11 San Francisco, California 94105
Telephone: (415) 781-7900
Facsimile: (415) 781-2635

12 Attorneys for Defendants
13 ARIZONA BEVERAGES USA LLC,
14 HORNELL BREWING CO., INC. d/b/a
15 FEROLITO, VULTAGGIO & SONS, INC.
and BEVERAGE MARKETING USA, INC.

BAKER LAW PC
G. RICHARD BAKER Bar No. 224003
richard@bakerlawpc.com
2229 First Avenue North
Birmingham, Alabama 35203
Telephone: (205) 241-9608
Facsimile: (205) 449-0050

JACKSON & TUCKER PC
JOSEPH L. TUCKER (*pro hac vice*)
josh@jacksonandtucker.com
2229 First Avenue North
Birmingham, Alabama 35203
Telephone: (205) 252-3535
Facsimile: (205) 252-3536

Attorneys for Plaintiffs
LAUREN RIES and SERENA ALGOZER

(Additional Counsel Listed on Signature Page)

16
17 UNITED STATES
18 NORTHERN DISTRICT
19 SAN JOSE
20 LAUREN RIES and SERENA ALGOZER,
Individuals on behalf of themselves and all
others similarly situated.

CASE NO. CV 10-01139 JF

STIPULATED PROTECTIVE ORDER

21 Plaintiffs,
22 v.
23 ARIZONA BEVERAGES USA LLC,
24 HORNELL BREWING COMPANY, INC.,
BEVERAGE MARKETING USA, INC. and

Defendants

1 It appearing that discovery in the above-captioned action is likely to involve the
 2 disclosure of confidential information, it is ORDERED as follows:

3 1. Any party to this litigation and any third-party shall have the right to designate as
 4 “Confidential” and subject to this Order any information, document, or thing, or portion of any
 5 document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing,
 6 financial, sales or other confidential business information, or (b) that contains private or
 7 confidential personal information, or (c) that contains information received in confidence from
 8 third parties, or (d) which the producing party otherwise believes in good faith to be entitled to
 9 protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure. Any party to this
 10 litigation or any third party covered by this Order, who produces or discloses any confidential
 11 material, including without limitation any information, document, thing, interrogatory answer,
 12 admission, pleading, or testimony, shall mark the same with the foregoing or similar legend:
 13 “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”
 14 (hereinafter “Confidential Material”).

15 2. Any party to this litigation and any third-party shall have the right to designate as
 16 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” and subject to this Order any information,
 17 document, or thing, or portion of any document or thing that contains extremely sensitive
 18 business or personal information, the disclosure of which is extremely likely to cause significant
 19 consistent with Fed. R. Civ. P. 26(c)(1).
 20 harm to an individual or to the business or competitive position of the designating party, / Any
 21 party to this litigation or any third party who is covered by this Order, who produces or discloses
 22 any Attorneys’ Eyes Only material, including without limitation any information, document,
 23 thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the
 24 foregoing or similar legend: “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 25 “CONFIDENTIAL ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER”
 (hereinafter “Attorneys’ Eyes Only Material”).

26 3. All Confidential Material shall be used by the receiving party solely for purposes
 27 of the prosecution or defense of this action, shall not be used by the receiving party for any
 28 business, commercial, competitive, personal or other purpose, and shall not be disclosed by the

1 receiving party to anyone other than those set forth in Paragraph 4, unless and until the
 2 restrictions herein are removed either by written agreement of counsel for the parties, or by Order
 3 of the Court. It is, however, understood that counsel for a party may give advice and opinions to
 4 his or her client solely relating to the above-captioned action based on his or her evaluation of
 5 Confidential Material, provided that such advice and opinions shall not reveal the content of such
 6 Confidential Material except by prior written agreement of counsel for the parties, or by Order of
 7 the Court.

8 4. Confidential Material may be disclosed only to the following individuals under
 9 the following conditions:

10 a. Outside counsel (herein defined as any attorney at the
 11 parties' outside law firms) and relevant in-house counsel for the parties;

12 b. Outside experts or consultants retained by outside counsel
 13 for purposes of this action, provided they have signed a non-disclosure
 14 agreement in the form attached hereto as Exhibit A;

15 c. Secretarial, paralegal, clerical, duplicating and data
 16 processing personnel of the foregoing;

17 d. Any deponent may be shown or examined on any
 18 information, document or thing designated Confidential if it appears that
 19 the witness authored or received a copy of it, was involved in the subject
 20 matter described therein or is employed by the party who produced the
 21 information, document or thing, or if the producing party consents to such
 22 disclosure;

23 e. Vendors retained by or for the parties to assist in preparing
 24 for pretrial discovery, trial and/or hearings including, but not limited to,
 25 court reporters, litigation support personnel, jury consultants, individuals
 26 to prepare demonstrative and audiovisual aids for use in the courtroom or
 27 in depositions or mock jury sessions, as well as their staff, stenographic,

1 and clerical employees whose duties and responsibilities require access to
2 such materials; and

3 f. The parties. In the case of parties that are corporations or
4 other business entities, "party" shall mean executives who are required to
5 participate in decisions with reference to this lawsuit.

6 5. Confidential Material shall be used only by individuals permitted access to it
7 under Paragraph 4. Such Confidential Material, copies thereof, and the information contained
8 therein, shall not be disclosed in any manner to any other individual, until and unless (a) outside
9 counsel for the party asserting confidentiality waives the claim of confidentiality, or (b) the Court
10 orders such disclosure.

11 6. With respect to any depositions that involve a disclosure of Confidential Material
12 of a party to this action, such party shall have until thirty (30) days after receipt of the deposition
13 transcript within which to inform all other parties that portions of the transcript are to be
14 designated Confidential, which period may be extended by agreement of the parties. No such
15 deposition transcript shall be disclosed to any individual other than the individuals described in
16 Paragraph 4(a), (b), (c), (e) and (f) above and the deponent during these thirty (30) days, and no
17 individual attending such a deposition shall disclose the contents of the deposition to any
18 individual other than those described in Paragraph 4(a), (b), (c), (e) and (f) above during said
19 thirty (30) days. Upon being informed that certain portions of a deposition are to be designated
20 as Confidential, all parties shall immediately cause each copy of the transcript in its custody or
21 control to be appropriately marked and limit disclosure of that transcript in accordance with
22 Paragraphs 3 and 4.

23 7. Attorneys' Eyes Only Material may be used by the receiving party solely for
24 purposes of the prosecution or defense of this action and shall not be used by the receiving party
25 for any business, commercial, competitive, personal or other purpose. Attorneys' Eyes Only
26 Material may be disclosed only to outside counsel for the receiving party and to such other
27 persons as counsel for the producing party agrees in advance or as ordered by the Court.

28

1 8. If counsel for a party receiving documents or information designated as
 2 Confidential Material or Confidential – Attorneys’ Eyes Only hereunder objects to such
 3 designation of any or all of such items, the following procedure shall apply:

4 a. Counsel for the objecting party shall serve on the
 5 designating party or third party a written objection to such designation,
 6 which shall identify the documents or information in question. Counsel
 7 for the designating party or third party shall respond in writing to such
 8 objection within ten (10) days, and shall state with particularity the
 9 grounds for asserting that the document or information is Confidential or
 10 Confidential – Attorneys’ Eyes Only. If no timely written response is
 11 made to the objection, the challenged designation will be deemed to be
 12 void. If the designating party or nonparty makes a timely response to such
 13 objection asserting the propriety of the designation, counsel shall then
 14 confer in good faith in an effort to resolve the dispute.

15 b. If a dispute as to a Confidential or Confidential –
 16 Attorneys’ Eyes Only designation of a document or item of information
 17 cannot be resolved by agreement, the proponent of the designation being
 18 challenged shall present the dispute to the Magistrate Judge assigned to
 19 adjudicate discovery disputes. The document or information that is the
 20 subject of the filing shall be treated as originally designated pending
 21 resolution of the dispute. The burden of persuasion in any such challenge
 22 proceeding shall be on the designating party.

23 9. The party seeking to submit Confidential or Attorneys’ Eyes Only Material to the
 24 Court will seek an order of this Court permitting that party to file materials under seal in
 25 accordance with the applicable Federal rules of Civil Procedure as well as the Local Rules for the
 Northern District of California, including Civil Local Rule 79-5.

26 10. If the need arises during trial or at any hearing before the Court for any party to
 27 disclose Confidential or Confidential – Attorneys’ Eyes Only Material, it may do so only after
 28 giving notice to the producing party and as directed by the Court.

1 11. To the extent consistent with applicable law, the inadvertent or unintentional
 2 disclosure of Confidential Material or Attorneys' Eyes Only Material that should have been
 3 designated as such, regardless of whether the information, document or thing was so designated
 4 at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of
 5 confidentiality, either as to the specific information, document or thing disclosed or as to any
 6 other material or information concerning the same or related subject matter. Such inadvertent or
 7 unintentional disclosure may be rectified by notifying in writing counsel for all parties to whom
 8 the material was disclosed that the material should have been designated Confidential or
 9 Confidential – Attorneys' Eyes Only within a reasonable time after disclosure. Such notice shall
 10 constitute a designation of the information, document or thing as Confidential Material or
 11 Attorneys' Eyes Only Material under this Order.

12 12. When the inadvertent or mistaken disclosure of any information, document or
 13 thing protected by privilege or work-product immunity is discovered by the producing party and
 14 brought to the attention of the receiving party, the receiving party's treatment of such material
 15 shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or
 16 mistaken disclosure of such information, document or thing shall not by itself constitute a waiver
 17 by the producing party of any claims of privilege or work-product immunity. However, nothing
 18 herein restricts the right of the receiving party to challenge the producing party's claim of
 19 privilege if appropriate within a reasonable time after receiving notice of the inadvertent or
 20 mistaken disclosure.

21 13. No information that is in the public domain or which is already known by the
 22 receiving party through proper means or which is or becomes available to a party from a source
 23 other than the party asserting confidentiality, rightfully in possession of such information on a
 24 nonconfidential basis, shall be deemed or considered to be Confidential Material or Attorneys'
 25 Eyes Only Material under this Order.

26 14. This Order shall not deprive any party of its right to object to discovery by any
 27 other party or on any otherwise permitted ground. This Order is being entered without prejudice
 28 to the right of any party to move the Court for modification or for relief from any of its terms.

1 15. This Order shall survive the termination of this action and shall remain in full
 2 force and effect unless modified by an Order of this Court or by the written stipulation of the
 3 parties filed with the Court.

4 16. Upon final conclusion of this litigation, each party or other individual subject to
 5 the terms hereof shall be under an obligation to certify, under oath, that they have either returned
 6 to opposing counsel or destroyed all originals and unmarked copies of documents and things
 7 containing Confidential Material and Attorneys' Eyes Only Material and to destroy, should such
 8 source so request, all copies of Confidential Material and Attorneys' Eyes Only Material that
 9 contain and/or constitute attorney work product as well as excerpts, summaries and digests
 10 revealing Confidential Material and Attorneys' Eyes Only Information; provided, however, that
 11 counsel may retain complete copies of all transcripts and pleadings including any exhibits
 12 attached thereto for archival purposes, subject to the provisions of this Consent Confidentiality
 13 Order.

14 17. This Order may be modified by agreement of the parties, subject to Court
 15 approval. In addition, the provisions of this Protective Order may be modified by this Court, for
 16 good cause, or in the interest of justice, or in its own order at any time in these proceedings. The
 17 within order and parties' stipulation do not change, amend or circumvent any court rule or local
 18 rule.

19
 20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 DATED: August 23, 2011

22 JACKSON & TUCKER PC

23 By: /s/ Joseph L. "Josh" Tucker (with permission)
 24 Joseph L. Tucker (*pro hac vice*)
 Attorneys for Plaintiffs
 25 LAUREN RIES and SERENA ALGOZER

26
 27 BAKER LAW PC
 28 G. Richard Baker (Bar No. 224003)
 2229 First Avenue North
 Birmingham, Alabama 35203
 Telephone: (205) 241-9608
 Facsimile: (205) 449-0050

1 WILENTZ GOLDMAN & SPITZER P.A.
2 Kevin P. Roddy (Bar No. 128283)
3 Phillip A. Tortoreti (*pro hac vice*)
4 Daniel R. Lapinski (*pro hac vice*)
5 Suite 900 Box 10
6 Woodbridge, New Jersey 07095
7 Telephone: (732) 636-8000
8 Facsimile: (205) 449-0050

9
10 DL LAW GROUP
11 David D. Lilienstein (Bar No. 218923)
12 345 Franklin Street
13 San Francisco, California 94102
14 Telephone (415) 271-7169
15 Facsimile (415) 358-8484

16 *Attorneys for Plaintiffs*
17 LAUREN RIES and SERENA ALGOZER

18 DATED: August 23, 2011

19 McELROY DEUTSCH MULVANEY &
20 CARPENTER, LLP

21 /s/ Robert P. Donovan
22 Robert P. Donovan (Appearing *pro hac vice*)

23 SEDGWICK LLP

24 /s/ Andrew J. King
25 Andrew J. King (Bar No. 253962)
26 Kevin J. Dunne (Bar No. 40030)

27 *Attorneys for Defendants*
28 ARIZONA BEVERAGES USA LLC, HORNELL
BREWING COMPANY, INC., d/b/a FEROLITO,
VULTAGGIO & SONS, INC. and BEVERAGE
MARKETING USA, INC.

29 PURSUANT TO STIPULATION, IT IS SO ORDERED.

30 DATED: 9/8/2011

31 Paul S. Grewal

32 MAGISTRATE JUDGE PAUL S. GREWAL
33 UNITED STATES DISTRICT COURT

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____
_____, [print or type full address], declare under penalty of perjury that I have
read in its entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Northern District of California on [date] in the case of *Lauren Ries,*
et al. v. Arizona Beverages USA LLC, et al., Case No. 10-01139 (JF). I agree to comply with and
to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of _____
17 _____ [print or type full address and telephone number] as my California
18 agent for service of process in connection with this action or any proceedings related to
19 enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 || Signature: _____